

CONSTRUCTION AND DESIGN REGULATORY AGENCIES

proceedings, but noted that application of the exception is not automatic. It is permitted if either of two tests are satisfied—both of which must be analyzed by the bankruptcy court. Thus, the appellate panel remanded the matter to the bankruptcy court for further proceedings.

RECENT MEETINGS

At its July meeting, CSLB reelected contractor Joe Tavaglione as its Chair and elected Bob Alvarado, the Board's building trade labor organization representative, as its Vice-Chair.

FUTURE MEETINGS

- November 9–10, 1999 in Riverside.
- January 18, 2000 in Sacramento.
- March 17, 2000 in San Diego.
- April 26, 2000 in Downey.
- July 26–27, 2000 in San Diego.
- October 25–26, 2000 in Oakland
- November 8–9, 2000 in Riverside.

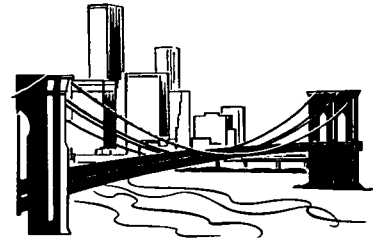
Board for Professional Engineers and Land Surveyors

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The Board for Professional Engineers and Land Surveyors (PELS) is a consumer protection agency within the state Department of Consumer Affairs (DCA). PELS regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700–6799 of the Business and Professions Code, and the Professional Land Surveyors' Act, sections 8700–8806 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR). The basic functions of the Board are to conduct examinations, issue licenses, set standards for the practice of engineering and land surveying, investigate complaints against licensees, and take disciplinary action as appropriate.

PELS administers a complicated licensing system under which land surveyors and fifteen categories of engineers are licensed and regulated. Land surveyors are licensed under section 8725 of the Business and Professions Code. Pursuant to section 6730 of the Business and Professions Code, professional engineers may be licensed under the three "practice act" categories of civil, electrical, and mechanical engineering. Structural engineering and geotechnical engineering are "title authorities" linked with the civil engineering practice act; both require licensure as a civil engineer and passage of an additional examination. The "title act" categories of agricultural, chemical, control system, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, and traffic engineering are licensed under section 6732 of the Business and Professions Code. PELS' "title acts" only restrict the use of a title; anyone (including an unlicensed person) may perform the work of a title act engineer so long as he/she does not use the restricted title.

The Board consists of thirteen members: seven public members, one land surveyor, four practice act engineers, and one title act engineer. The Governor appoints eleven of the



members for four-year terms that expire on a staggered basis. Additionally, the Assembly Speaker and the Senate Rules Committee each appoint one public member.

The Board has established four standing committees (Administration, Enforcement, Examination/Qualifications, and Legislative), and appoints other special committees as needed. Pursuant to Business and Professions Code section 6726, PELS has also established several technical advisory committees (TACs) to provide advice and recommendations in various technical areas.

On June 1, the Senate Rules Committee announced its reappointment of Millicent Safran as a public member on PELS. On September 13, Assembly Speaker Antonio Villaraigosa reappointed public member Andrew J. Hopwood to another term on the Board.

MAJOR PROJECTS

PELS Preparing for Sunset Review

On October 1, in preparation for its upcoming sunset review hearing, PELS submitted a supplemental report to the Joint Legislative Sunset Review Committee (JLSRC). The Board's October 1999 report updates an October 1, 1998 report that it submitted in anticipation of a fall 1998 sunset review. However, that review was postponed until the fall of 1999, and SB 1306 (Committee on Business and Professions) (Chapter 656, Statutes of 1999) has extended the existence of the Board to accommodate the new schedule (see LEGISLATION).

The 1999 review follows the Board's initial 1996–97 review, at which time the JLSRC instructed PELS to investigate and resolve several critical issues, including the following:

♦ **Continued Need for Title Acts.** After PELS' 1996–97 sunset review, the JLSRC instructed the Board to reevaluate the continued need for its title acts (then numbering 13)

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under twelve specified criteria, and make recommendations on which title acts could be eliminated without endangering the health, safety, property, or welfare of the public. Three title acts (corrosion, quality, and safety) were eliminated effective January 1, 1999 by virtue of AB 969 (Cardenas) (Chapter 58, Statutes of 1998), but not because PELS engaged in an in-depth analysis using the twelve criteria suggested by the JLSRC; rather, PELS supported their elimination because no national examination is available in these areas—thus requiring PELS to spend its own resources to develop exams and register engineering titles not recognized by many other states.

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Under a title act, individuals who meet certain criteria are permitted to use a certain title; others may practice in that area without restriction, but may not use that particular title. Critics contend that PELS' "stand-alone" title acts—that is, straight certification programs protecting the use of a title with no underlying license to discipline if a practitioner is incompetent—are ineffective and meaningless to public protection. If a title act engineer performs negligently and/or incompetently and actually harms someone, PELS is powerless to stop that person from practicing. The most PELS can do is revoke that person's right to use a particular title; there is no underlying license to discipline, and no way for the agency to protect the public from that practitioner.

In its 1998 report, PELS provided information and data indicating that the majority of the remaining title acts could be eliminated with no harm to the general public. However, despite these data, PELS recommended that the ten title acts "remain in place...for the present." [16:1 CRLR 111–12] Nothing in its 1999 supplement changes that conclusion.

◆ **The "Supplemental Work" Concept.** Under existing law, civil engineers may perform work falling within the scope of practice of other branches of professional engineering; however, all other PELS licensees are restricted to their disciplines. In the past, problems have arisen because the scope of practice of some of PELS' non-civil engineer licenses overlaps into practice act territory; indeed, several of PELS' title act disciplines are almost subsets of one or more practice acts. However, the Board's statute and its regulations

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fail to legitimize this overlap in any way, and in fact prohibit title act engineers from engaging in any practice act activities. This problem is exacerbated by the very broad and all-inclusive definition of civil engineering in the Business and Professions Code, and by the narrow regulatory definitions of every other engineering discipline. In its 1998 report, PELS expressed support for the idea of permitting electrical and

mechanical engineers to perform "supplemental" work in other engineering disciplines, so long as they are competent in these areas based on education, training, and experience, and the "supplemental" work is incidental to their primary work. However, PELS declines to extend the same authority to title act engineers. [16:1 CRLR 112] PELS opposes SB

191 (Knight), which would permit non-practice act engineers to engage in practice act work (see LEGISLATION).

◆ **Examination Issues.** Because of the number of disciplines it licenses, PELS administers an extraordinary number of different licensing exams. Some are nationally standardized exams created

by the National Council of Examiners for Engineering and Surveying (NCEES) and purchased by PELS for administration in California; others are developed by the state for use only in California. At its upcoming sunset review, PELS will encounter the following examination-related issues: (1) whether practice act engineer applicants should continue to be required to pass the Engineer-in-Training (EIT) exam provided by NCEES; (2) whether the existing "seismic principles" exam, which must be taken by civil engineer candidates, tests only those seismic design principles which are critical to practice in California, and whether other disciplines should also be required to take that examination; (3) whether civil engineer candidates should continue to be required to pass the "engineering surveying" examination; (4) whether PELS should continue to administer its own structural engineering examination, or whether it should instead administer NCEES' exam; and (5) whether PELS should continue to administer its own land surveyor examination (with its 1998 pass rate of 1.9%), or whether it should instead administer NCEES' exam (see below). [16:2 CRLR 94–95]

◆ **Retired/Inactive License Status.** In 1998, PELS attempted to adopt regulations creating a retired or inactive status license, to enable licensees to retire without simply failing to renew their licenses and allowing their licenses to become delinquent; however, those regulations were rejected as being unauthorized by statute. [16:1 CRLR 113] In 1999, PELS sponsored SB 1307 (Committee on Business and Professions), which establishes a "retired" category of licensure for engineers and land surveyors; this bill was signed in October (see LEGISLATION).

◆ **Board Policy Resolutions.** Over the past few years, PELS has adopted a number of "board policy resolutions" (BPR) to establish policy instead of adopting regulations through the rulemaking process. [16:2 CRLR 90] As PELS' BPRs have caused confusion and controversy within indus-

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try, the JSLRC has become concerned about this Board practice. In its 1999 supplement, PELS noted that—upon the advice of the Attorney General—it has discontinued its practice of adopting BPRs, has rescinded eleven BPRs, and is scheduled to review the remaining BPRs in December (see below for details).

◆ *The Definitions of “Electrical Engineering” and “Mechanical Engineering.”* Of its three engineering practice acts, only the definition of civil engineering appears in the Business and Professions Code; the definitions of electrical engineering and mechanical engineering appear only in the Board’s regulations, and have been criticized as being obsolete, vague, confusing, and circular. PELS has delegated the tasks of redrafting these definitions to its technical advisory committees (TACs), which are composed entirely of industry members and which meet (at most) quarterly outside regularly-scheduled Board meetings. [16:2 CRLR 96]

PELS’ Electrical Engineering TAC has been attempting to rewrite the definition of electrical engineering since 1992. In May 1995, the Office of Administrative Law rejected PELS’ proposed changes to the existing definition, and the EE-TAC has yet to devise another one.

In June, PELS’ Mechanical Engineering TAC approved a draft rewrite of the definition of mechanical engineering: “Mechanical engineering is that branch of professional engineering as defined in Section 6701 of the Code which deals with: the conversion, transmission, control and utilization of energy in thermal, fluid, or mechanical form; systems for heating, ventilation, refrigeration and plumbing; tools; machinery; flow and storage of fluids. It encompasses research, analysis, planning, design, management, production, and construction-related observation. It includes the environmental, public health and safety, economic and operational aspects of the above.”

At its July meeting, PELS discussed the ME-TAC’s plan to circulate the proposed definition to a number of engineering trade associations for comment; the ME-TAC plans to ask for “acceptance resolutions” from affected organizations before presenting the proposed definition to the Board for approval and commencement of the rulemaking process. Some Board members suggested modifications to the definition; others suggested changes to the cover letter that the ME-TAC plans to send with the definition. The ME-TAC agreed to make changes to the cover letter and resubmit it for Board approval at a future meeting.

◆ *The Need for a Fee Increase.* PELS is in the process of preparing fee increase legislation to be introduced in 2000. Because the agency has not raised its licensing or examination fees in the past ten years, and its revenue has been further cut by a decline in application fee revenue, it projects a deficit in its reserve fund by fiscal year 2001–2002. [16:2 CRLR 96] In this legislation, PELS may also seek to reduce

its existing four-year renewal cycle to two years (like most other DCA occupational licensing agencies); it believes the four-year cycle and the infrequency of license renewal may be partly to blame for the number of delinquent licenses and the number of reinstatement requests it must handle (see below for details).

At this writing, PELS’ sunset hearing is scheduled for November 30.

OAL Rejects “Fields of Expertise” as Underground Rulemaking; PELS Rescinds Other “Board Policy Resolutions”

Following an adverse ruling by the Office of Administrative Law (OAL) and a strongly-worded legal opinion by the Attorney General’s Office, PELS rescinded nine “board policy resolutions” (BPRs) at its September 17 meeting.

Since 1995, PELS has approved numerous BPRs to formalize its interpretation, opinion, and policies on various aspects of the statutes it administers. These “policy statements” have proven controversial because they have not been formally promulgated as regulations under the rulemaking procedures of the Administrative Procedure Act (APA)—including public notice for a 45-day comment period, an opportunity for a public hearing,

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formal Board adoption and preparation of a rulemaking record demonstrating that the agency has complied with all the requirements of the APA, and OAL review and approval. Not all Board “policy statements” must be adopted as regulations. However, if a BPR (1) amends, supplements, or revises any statute or regulation concerning professionals regulated by PELS, (2) is more than a mere restatement of existing law, (3) implements, interprets, or makes specific any law enforced or administered by PELS, or (4) governs PELS’ procedures, it must be adopted as a regulation. Recently, the legitimacy of specific BPRs has been called into question, leading the Board to revoke one at its April 9 meeting and to direct its attorneys to review the entire BPR process and its consistency with existing law. [16:2 CRLR 90–92]

The BPR issue intensified in May. On May 13, OAL issued a formal ruling rejecting PELS’ BPR #96-10, entitled *Fields of Expertise for Geologists and Civil Engineers*. The document—at one time negotiated and agreed upon by PELS and the Board of Registration for Geologists and Geophysicists (BRGG)—was intended to differentiate between the responsibilities and duties of registered civil engineers (regulated by PELS) and geologists (regulated by BRGG). *Fields of Expertise* identifies activities within the scope of practice of engineering and geology, reviews the “gray areas” where civil engineering and geology overlap, and lists activities that are normally performed by both professions. In OAL Determination No. 15 (1999), OAL concluded that the *Fields of Expertise* document is a standard of general application that

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“applies to the professional activities of all civil engineers, and ostensibly, geologists as well.” OAL further found that *Fields of Expertise* asserts that civil engineers may perform numerous tasks not mentioned in the Business and Professions Code, and purports to establish a “qualitative” vs. “quantitative” distinction between functions permitted geologists vs. civil engineers—a distinction that is not set forth in the Business and Professions Code; as such, the document interprets state law that establishes the scope of civil engineering. Finally, OAL found that *Fields of Expertise* does not qualify for any of the permitted exemptions to the APA’s rulemaking requirement, thus requiring PELS to formally adopt the document as a regulation in order for it to be binding on licensees.

On May 11, Deputy Attorney General Susan Ruff issued a legal opinion analyzing the BPR issue, noting that recent caselaw requires rulemaking whenever an agency seeks to interpret a statute or one of its regulations and apply that interpretation generally (rather than in a specific case). She stated:

“When a Board Policy Resolution affects members of the industry, the Policy Resolution is, in effect, an underground regulation. Its purpose is to ‘clarify’ (*i.e.*, interpret) existing law and set forth how the Board intends to apply that law in future situations. Such a resolution is unenforceable in a disciplinary proceeding and can cause confusion among members of the industry....This type of Board pronouncement is precisely the situation the APA tried to avoid by forbidding boards from issuing underground regulations in Government Code

section 11340.5.” Ruff described the existing exemptions to the rulemaking requirement, noting that they are very narrow and probably inapplicable to the Board’s BPRs, and further listed three alternatives to BPRs that are available to the Board when it wants to establish policy: (1) rulemaking under the APA; (2) designation of all or part of a disciplinary decision as a “precedent decision” under Government Code section 11425.60; or (3) the issuance of a “declaratory decision” under Government Code sections 11465.10–70. Ruff concluded by noting that the Attorney General’s Office “strongly suggest[s] that the Board sharply curtail the use of these Policy Resolutions.”

At its June meeting, PELS rescinded BPR #96-10, but declined to discuss Ruff’s memo and tabled the issue of BPRs to its July meeting. At the July meeting, Ruff was present to discuss her conclusions with the Board. Asked if all of PELS’ BPRs are underground regulations, Ruff noted that she would have to conduct a BPR-by-BPR review of each one to answer that question. PELS directed staff and Ruff to review all of its BPRs and identify which ones should be adopted as regulations or declaratory decisions.

At PELS’ September 17 meeting, DAG Ruff and DCA legal counsel Gary Duke presented a review of all 22 of PELS’ BPRs (including two that have already been rescinded—BPR #96-10 comparing civil engineering to geologists, which was rescinded in June (see above), and BPR #98-02 relating to accident scheme mapping, which was rescinded in April [16:2 CRLR 90–91] and is the subject of a bill later signed by Governor Davis (see LEGISLATION)). As for the remaining 20 BPRs, staff recommended that PELS rescind nine immediately and order continued review of the remaining eleven.

PELS adopted staff’s recommendation, and rescinded the following BPRs: BPR #95-01 (when plan checking must be done by or under the responsible charge of a licensed engineer or land surveyor); BPR #95-02 (when home inspections must be done by or under the responsible charge of a licensed engineer); BPR #95-03 (no scoring of any part of the civil engineer exam if an individual is caught cheating on one part of the exam); BPR #95-04 (review of closed complaint cases

by two members of the Enforcement Committee); BPR #95-05 (material or substantial compliance with the design of the professional seal illustrated in section 411, Title 16 of the CCR); BPR #96-01 (what constitutes examination subversion and how many “time remaining” warnings are to be given before time is called); BPR #96-02 (“technical” vs. “administration” appeals of exams); BPR # 96-08 (requirements for issuance of a temporary land surveying license); and BPR #97-01 (addressing the practice

of land surveying relative to monument durability and identification). PELS further directed staff to provide recommendations on the remaining eleven at its December 16 meeting.

Update on PELS Rulemaking

The following is an update on recent PELS rulemaking proceedings, some of which are described in detail in Volume 16, No. 2 (Summer 1999) of the *California Regulatory Law Reporter*:

◆ **Delinquent License Reinstatement Regulation.** On May 21, PELS published notice of its intent to amend section 424.5, Title 16 of the CCR, which implements the Board’s statutes governing the reinstatement of licenses that have become “delinquent” because they were not renewed within three years of their expiration. [16:2 CRLR 92–93]

Business and Professions Code sections 6795 and 8801 require professional engineers and land surveyors to renew their licenses every four years. A license that is allowed to lapse is considered “expired.” Under Business and Professions Code sections 6796 and 8802, a licensee with an expired license may reinstate his/her license any time within

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three years of expiration by simply paying the normal renewal fee plus a delinquent fee. However, if a license remains expired for more than three years, the licensee is considered "delinquent" and may not have his/her license reinstated without satisfying several conditions. Business and Professions Code sections 6796.3 and 8803 outline the requirements for reinstating a delinquent license: (1) the delinquent licensee must not have committed any act or crime substantially related to the qualifications, functions, and duties of his/her profession; (2) the licensee must take and pass the same examination as would be required of a first-time applicant; and (3) the licensee must pay all of the fees that would be required of a first-time applicant. These sections also authorize the Board to waive the examination requirement if the delinquent licensee demonstrates that he/she is qualified to practice; in making this determination, the Board must "give due regard to the public interest." Section 424.5, Title 16 of the CCR, outlines the information which must be provided by a delinquent licensee to the Board, and the criteria which must be evaluated by the Board in determining how to rule on a reinstatement request (and whether to waive the examination requirement).

Board staff has long been concerned about section 424.5 because it permits the fairly automatic reinstatement of a delinquent license without even contemplating the possibility of Board disciplinary action for practicing in California with a delinquent license. Further, PELS' current process of reviewing reinstatement applications and evaluating exam waiver requests consists of many time-consuming steps. Thus, staff proposed regulatory changes to clarify the criteria to be used by the Board in evaluating requests for reinstatement and exam waiver, and to specify the Board's authority to take disciplinary action for practicing with a delinquent license.

As published on May 21, the amendments to section 424.5 would clarify the steps that a delinquent licensee must satisfy in order to qualify for license reinstatement and waiver of the examination requirements (including the filing of an application form; submission of reference forms; passage of an exam on California laws and regulations; passage of PELS' seismic principles and engineering surveying exams if the applicant is a civil engineer who was initially licensed prior to January 1, 1988; payment of all accrued and unpaid renewal fees; and a demonstration that the applicant has not committed any acts or crimes constituting grounds for denial of licensure under Business and Professions Code section 480); state that any delinquent licensee who cannot satisfy the above steps must retake the licensing exam; and state that the Board may pursue disciplinary action (including revocation, suspension, citation, and/or fine) if evidence obtained during the investigation reveals that the applicant has violated any provision of the Business and Professions Code, the California

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Code of Regulations, or other applicable laws and regulations related to the practice of professional engineering or land surveying during the period of delinquency, including but not limited to practicing or offering to practice with an expired or delinquent license.

The Board did not hold a hearing, but accepted written comments on the proposed amendments to section 424.5 until July 5. At the Board's July 22 meeting, staff advised PELS that no comments had been received. The Board adopted the amendments, subject to a few slight modifications. On July 29, PELS released the modified version of the language of section 424.5 for an additional 15-day comment period ending on August 13. Thereafter, staff prepared the rulemaking file for submission to DCA and OAL; at this writing, the file is pending at OAL.

◆ **Citation and Fine Regulations.** On May 21, PELS published notice of its intent to amend its citation and fine regulations, sections 472-473.4, Title 16 of the CCR. Pursuant to Business and Professions Code sections 125.9 and 148, these regulations permit the Board's Executive Officer (EO) to issue citations and/or fines to licensees who violate any of the Board's statutes or regulations, or to nonlicensees who perform tasks or functions for which a license is required. Generally, a citation must be in writing and must describe the

nature of the violation; in imposing a fine (which may not exceed \$2,500), the EO must consider several enumerated factors. A cited person must be given an opportunity to appeal the citation by requesting a hearing before an administrative law judge.

Staff of the Board's Enforcement Unit proposed the amendments after comparing PELS' citation and fine regulations with those of other DCA boards and bureaus, because "we feel that our citation regulations are confusing and are not providing the affected parties with sufficient information concerning the citation process." Specifically, staff's proposed amendments would (1) clarify the existing regulations to permit PELS' EO to issue a citation with an order of abatement and a fine for fairly serious violations (the existing regulations permit the EO to issue a citation with an order of abatement or a fine); (2) eliminate specific ranges of fines that may be assessed, and expand the elements that must be considered when assessing a fine; (3) permit an extension of time for "good cause" when the cited person cannot abate the cited activity within the time ordered for reasons beyond his/her control; (4) allow the cited person the right to request an administrative hearing after being served with the affirmation of a citation following an informal conference with the EO; (5) clarify that an order to abate and/or pay a fine is stayed until after a requested informal conference or hearing is held; and (6) permit PELS to serve citations by personal service in addition to certified mail.

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The Board did not hold a hearing, but accepted written comments on the proposed amendments until July 5. At the Board's July 22 meeting, staff advised PELS that no comments had been received. The Board adopted the amendments, subject to a few nonsubstantive changes. Thereafter, staff prepared the rulemaking file for submission to DCA and OAL; at this writing, the file is pending at OAL.

◆ **Notice to Clients of State Licensure.** SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) requires PELS and other DCA occupational licensing boards to adopt regulations requiring their licensees to provide notice to clients that they are licensed by the State of California. [16:1 CRLR 117] On July 2, PELS published notice of its intent to adopt new section 463.5, Title 16 of the CCR, to implement SB 2238.

Under proposed section 463.5, a PELS licensee may provide notice to clients that he/she is licensed by the state by "one or more" of the following methods: (1) displaying his/her wall certificate in a public area, office, or individual work area of the premises where the licensee provides the licensed service; (2) providing a statement to each client, to be signed and dated by the client and retained in the licensee's records, that states that the client understands that the licensee is licensed by the Board; (3) including a statement that the licensee is licensed by PELS either on letterhead or on a contract for services; if included on a contract, the notice must be in at least 12-point type and located immediately above the client's signature line; or (4) posting a notice in a public area of the premises where the licensee provides the licensed services, in at least 48-point type, that states that the named licensee is licensed by the Board.

The Board did not hold a hearing, but accepted written comments on proposed section 463.5 until August 16. At its September 17 meeting, PELS adopted the section, subject to a few nonsubstantive grammatical changes. Thereafter, staff prepared the rulemaking file for submission to DCA and OAL; at this writing, the file is pending at DCA.

◆ **Board Republishes Amendments to Rule 411 Regarding Seal and Signature.** Business and Professions Code sections 6735, 6735.3, and 6735.4 require civil engineers, electrical engineers, and mechanical engineers, respectively, to sign plans, specifications, and reports (to indicate that they have been prepared by an engineer or by a subordinate under his/her direction) and to stamp those documents with his/her official seal (which must include his/her license expiration date). Section 411, Title 16 of the CCR, sets forth the design, contents, and requirements of the seal required by the Business and Professions Code. Under current section 411, the PE seal must include the term "registered professional engineer."

In January 1999, PELS proposed to amend section 411 to permit engineers to use either "registered professional engi-

neer" or "licensed professional engineer" on the seal. Land surveyors may use either "licensed land surveyor" or "professional land surveyor." These changes are consistent with AB 969 (Cardenas) (Chapter 59, Statutes of 1998), which deletes the use of the term "registration" throughout the Board's statute and provides instead for the licensure of professional engineers. [16:1 CRLR 117] The proposed changes would also permit the seal to contain an abbreviated form of the licensee's name or a combination of initials representing the licensee's name, provided the surname listed with the Board appears on the seal and in the signature; prohibit a licensee from preprinting blank forms with his/her seal and from using decals or other seal replicas; require work that is performed by, or under the responsible charge of, more than one licensee to be

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signed and sealed in accordance with the PE Act and the Land Surveyors' Act and in a manner such that all work can be clearly attributed to the responsible licensee; specify that the seal must be capable of leaving a permanent ink, impression, or electronically-generated representation on the work; and prohibit a licensee from using signature reproductions, including but not limited to rubber stamps and electronically-generated signatures, in lieu of his/her actual signature.

The Board's proposals have generated a bit of controversy, including several comments from the California Department of Transportation (Caltrans), which opposes the proposed prohibition on the use of electronically-generated signatures on plans and contracts. Caltrans has been using electronically-generated seals and signatures on its electronically-published construction contract documents for over ten years, and states that such practice is legal pursuant to a 1986 opinion from its own legal counsel and a 1990 letter from former PELS Executive Officer Darlene Stroup. Following a contentious public hearing at its April 1999 meeting, the Board deferred consideration of the issue until staff obtained more information surrounding the issue of electronic signatures. [16:2 CRLR 93-94]

At its July meeting, PELS held another lengthy discussion of the electronic signature issue. Enforcement Coordinator Nancy Eissler noted that comments were split 50/50 for and against the use of electronic signatures, especially on the originals of plans and specifications, and reminded the Board that the proposed regulatory language does not prohibit electronic seals (just electronic signatures). Some members urged the Board to amend the regulation to permit the use of an electronic signature on copies, if the original contains a "wet" signature. Others were concerned about the possibility of misuse of electronic signatures. Once again, a Caltrans representative was present, and stated that Caltrans has completed about 10,000 specifications and contracts over the past ten years using electronic seals and signatures, and there has never been a problem with their use. He requested

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that the Board delay action on its proposed prohibition until Caltrans has an opportunity to research the fiscal impact. Board members then argued about whether the regulation should address the issue of electronic signatures; if the regulation is silent on the issue, Caltrans and others could continue to use them until more research can be done on their reliability and/or potential for misuse. Following further discussion, the Board agreed to republish the amendments to section 411, retaining the provisions that permit use of an electronically-generated seal but deleting the subsection that addresses the issue of electronic signatures.

On October 8, PELS republished notice of its intent to amend section 411, Title 16 of the CCR. Under the new language, licensees have the option of using either "registered" or "licensed" in front of the term "professional engineer" on the seal. The seal may contain an abbreviated form of the licensee's name or a combination of initials representing the licensee's name, provided the surname listed with the Board appears on the seal and in the signature. The seal must be capable of leaving "a permanent ink representation, an impression, or an electronically-generated representation on the documents. The seal image shall be capable of being visually reproduced." The regulation would prohibit the preprinting of blank forms with the seal or signature, the use of decals of the seal or signature, and the use of a rubber stamp of the signature. Finally, the regulatory language would require that work performed by, or under the responsible charge of, more than one licensee must be signed and sealed in accordance with the PE Act and the Land Surveyors' Act and in a manner such that all such work can be clearly attributed to the responsible licensee. "When signing and sealing documents on which two or more licensees have worked, the signature and seal of each licensee shall be placed on the documents with a notation describing the work done under each licensee's responsible charge."

At this writing, the Board does not intend to hold a public hearing on its proposed amendments; however, it is accepting written comments until November 7.

Board Committee Exploring Land Surveyor Education, Experience, and Examination Issues

The Board's Examination/Qualifications Committee continues to explore the reasons that the pass rate on PELS' professional land surveyor (PLS) examination is so low—15% in 1993, 9% in 1995, 1.9% in 1998, and 14% in 1999. The Board develops and administers its own PLS exam, and is under pressure by the JLSRC and land surveyor organizations to demonstrate why it should not shift to the PLS exam developed by NCEES. [16:2 CRLR 94; 16:1 CRLR 113]

The Board defends its exam, insisting that it compared the 1998 exam to exams from the previous two years and

found them comparable in terms of test plan coverage, difficulty, and fairness. Instead, the Board points to the overall educational and experience qualifications of those who are permitted to sit for the exam, arguing that most examinees simply do not have adequate education and experience to pass the exam.

At its September 16 meeting, the Examination/Qualifications Committee reviewed a report prepared by staff that analyzed various aspects of this problem. To sit for the exam, Business and Professions Code section 8742 requires candidates to provide evidence of one of the following: (a) graduation from a four-year postsecondary curriculum with an emphasis in land surveying approved by the Board, two years of actual broad-based experience acceptable to the Board, and possession of a land-surveyor-in-training (LSIT) certificate; (b) at least six years of actual broad-based experience in land surveying (two years of credit may be awarded for an LSIT certificate), including one year of responsible field training and one year of responsible office training acceptable to the Board, and possession of a LSIT or engineer-in-training certificate; or (c) registration as a civil engineer with two years of actual broad-based experience in land surveying acceptable to the Board.

According to Board staff, most PLS applicants qualify to sit for the exam through experience; few have a college degree. Over 57% of PLS applicants have a high school degree; 11% have an associate of arts degree; and only 29% have a college degree. The staff report noted that "a major reason for the large proportion of unqualified candidates is the ease by which candidates can obtain qualifying references.

Often, a land surveyor will act as a reference for a candidate even if they know that the candidate is not at the minimal competence level. The perception is that the [exam] will eliminate or 'weed out' the clearly unqualified candidates." Additionally, the requirement for "broad-based experience" was only recently added by SB 2239 (Committee on Business and Professions) (Chapter 878, Statutes of 1998) [16:1 CRLR 117], and PELS has yet to adopt regulations defining the quality of experience that meets that requirement. Although the Land Surveying Technical Advisory Committee has drafted regulations fleshing out SB 2239's "broad-based experience" requirement, in July the Examination/Qualifications Committee referred those draft regulations to the Civil Engineering Technical Advisory Committee for further review.

The staff report outlined five alternatives that will enable the Board to raise the pass rate on the land surveyor examination: (1) include sample questions with the PLS exam information handout booklet which is distributed to exam candidates; (2) conduct pre-examination discussions at Board-sponsored candidate outreach programs and review sample materials with attendees; (3) sponsor legislation requiring all

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LS candidates to meet minimum standards of both formal education and experience before they may sit for the exam; (4) work cooperatively with the land surveyor community, emphasize the importance of referring only qualified candidates, and impose penalties on licensed land surveyors who purposely act as references for PLS candidates who are clearly not minimally competent to practice land surveying; and (5) implement a policy that would require LS candidates to submit a development plan to the Board if they fail the PLS exam after a predetermined number of attempts; the candidate must satisfy the development plan before being permitted to re-take the exam.

PELS has already approved Alternative 1, and it approved Alternative 2 at its September 17 meeting. The remaining alternatives were the subject of discussion at the Examination/Qualifications Committee's September 16 meeting, at which committee members noted that much PLS work is done via computers and preprogrammed formulae, whereas the exam is not taken with the advantage of computerized formulae and most PLS candidates lack strong math skills. The Committee took no action on Alternatives 3-5, preferring to discuss them at future meetings.

LEGISLATION

SB 1306 (Committee on Business and Professions), as amended August 31, extends the Board's sunset date to July 1, 2001, to enable legislative review of PELS' performance during the fall of 1999 and to allow for the passage of legislation extending the sunset date during 2000 (see MAJOR PROJECTS). Governor Davis signed this bill on October 6 (Chapter 656, Statutes of 1999).

SB 1307 (Committee on Business and Professions), as amended August 31, establishes a "retired" category of licensure for engineers and land surveyors, to enable licensees who are no longer practicing and do not wish to pay the \$160 quadrennial renewal fee (\$40 per year) to be designated as "retired" rather than "delinquent" (see MAJOR PROJECTS). The holder of a retired license issued pursuant to this provision may not engage in any activity for which an active engineer's/land surveyor's license is required. The retired license fee may not be more than 50% of the renewal fee in effect on the date of application. In order for the holder of a retired license issued pursuant to this provision to restore his/her license to active status, he/she must pass the second division examination that is required for initial licensure with the Board.

SB 1307 also makes it a crime for any person to impersonate or use the seal of a licensed professional engineer or land surveyor. Finally, the bill would also make misrepresentation in the practice of land surveying a basis for license suspension or revocation. Governor Davis signed SB 1307 on October 10 (Chapter 983, Statutes of 1999).

AB 1341 (Granlund), as amended June 14, exempts from the Professional Land Surveyors' Act all state, county, city, or city and county public safety employees investigating any crime or infraction for the purpose of determining or pros-

ecuting a crime or infraction. AB 1341 was introduced to supersede PELS' adoption of BPR #98-02, which interpreted the Land Surveyors' Act to encompass certain activities engaged in by those who map accident scenes (see MAJOR PROJECTS). The bill clarifies that law enforcement personnel may perform tasks normally performed around an accident scene without being licensed as a land surveyor. The bill also provides that the exemption does not permit a public safety employee to offer or perform land surveying for any purpose other than determining or prosecuting a crime or infraction. AB 1341 was signed by the Governor on July 14 (Chapter 125, Statutes of 1999).

AB 1342 (Granlund), as amended August 17, makes several technical changes to the Professional Land Surveyors' Act. First, it provides that neither a record of survey nor a corner record is required when the survey is of a mobilehome park interior lot as defined in Health and Safety Code section 18210, so long as no subdivision map has been filed previously for the interior lot and no conversion to residential ownership by mobilehome park tenants has occurred pursuant to Government Code section 66428.1. AB 1342 also amends Business and Professions Code section 8773.1 to require a corner record to be on a single 8.5" by 11" sheet that may consist of a front and back page. Finally, the bill deletes the requirement that every map, plat, report, description, or other document issued by a licensed land surveyor must comply with specified "record of survey" requirements, and instead requires that maps and plats issued by them must show the bearing and length of lines, scale of map and north arrow, the name and legal designation of the property depicted, and the date or time period of the preparation of the map or plat. Governor Davis signed AB 1342 on October 5 (Chapter 608, Statutes of 1999).

AB 540 (Machado). Existing law requires the attorney for the plaintiff or cross-complainant in any action arising out of the professional negligence of an architect, professional engineer, or land surveyor to file a certificate declaring either that the attorney has consulted and received an opinion from an architect, professional engineer, or land surveyor licensed to practice in this state or in any other state, or that the attorney was unable to obtain that consultation for specified reasons. As amended May 6, AB 540 requires the certificate to be served in addition to being filed. This bill was signed by the Governor on July 26 (Chapter 176, Statutes of 1999).

AB 850 (Torlakson), as amended September 3, establishes the Permanent Amusement Ride Safety Inspection Program, to be administered by Cal-OSHA. AB 850 establishes a program for the regulation of permanent amusement rides, including the adoption of regulations for installation, maintenance, operation, and inspections of rides by a "qualified safety inspector"; required recordkeeping and accident reporting; and financial responsibility requirements. The bill also sets forth the requirements of the "qualified safety inspector" to mean either of the following: (1) a person who holds a valid professional engineer license issued by this state or is-

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sued by an equivalent licensing body in another state, and who has been approved by Cal-OSHA's Division of Occupational Safety and Health as a qualified safety inspector for permanent amusement rides; or (2) a person who documents to the satisfaction of the Division that he/she meets all of the following requirements: (a) the person has a minimum of five years of experience in the amusement ride field, at least two years of which were involved in actual amusement ride inspection with a manufacturer, government agency, amusement park, carnival, or insurance underwriter; (b) the person completes not less than 15 hours per year of continuing education at a school approved by the Division, which education shall include in-service industry or manufacturer updates and seminars; and (c) the person has completed at least 80 hours of formal education during the past five years from a school approved by the Division for amusement ride safety.

This bill was introduced in response to tragic accidents and injuries which have occurred at permanent amusement parks in California. California leads the nation in amusement ride deaths—twelve from 1973 through 1996. Of these twelve deaths, at least 10 occurred at permanent parks, which the state did not regulate prior to this legislation. Governor Davis signed AB 850 on October 2 (Chapter 585, Statutes of 1999).

AB 1096 (Romero), as amended August 25, would create a Board of Interior Design within DCA and establish a registration program for interior designers. The regulatory scheme would replace an existing state-sanctioned private certification program with respect to interior designers, whereby practitioners who meet specified education and experience standards may use the designation "certified interior designer." Under AB 1096 (which is intended to be a title act to protect the use of the term "registered interior designer"), an interior designer must satisfy certain education, experience, and examination requirements and be registered by the Board in order to advertise or otherwise hold him/herself out as a "registered interior designer." PELS has taken an "oppose unless amended" position on AB 1096, seeking an amendment that will specifically preclude an interior designer from performing any work that falls within the definition of engineering. *[S. B&P]*

SB 1216 (Hughes), as introduced in February 1999, would create a registration program for home inspectors within DCA. PELS opposes this bill unless it is amended to state that home inspectors may not perform engineering work covered by the PE Act. *[S. B&P]*

SB 191 (Knight), as introduced in January 1999, would repeal Business and Professions Code section 6717, which authorizes PELS to define, by regulation, the scope of each branch of professional engineering other than civil engineering for which registration is provided. Instead, the bill would specifically authorize a professional engineer to practice civil, electrical, or mechanical engineering if he/she is by education or experience fully competent and proficient; however, the use of any branch title would be subject to being registered in that branch. The bill would also specifically provide that the PE Act does not prohibit the practice of any other legally recognized profession, trade, or science if the person is practicing within that profession, trade, or science.

SB 191 is sponsored by the California Legislative Council of Professional Engineers (CLCPE) to eliminate existing civil, mechanical, or electrical engineering practice restrictions on (a) other registered professional engineers who are competent to practice in those engineering branches, and (b) other persons when they are practicing in other lawful professions or occupations. According to the proponents, the current engineering practice restrictions do not protect the public health and safety, but serve only to limit who may offer those engineering services and inhibit the economy. PELS opposes this two-year bill, arguing that elimination of its authority to define engineering scope of practice could leave the practice of engineering "vague and confusing." Numerous PE trade associations also oppose SB 191, contending that it would allow any engineer to practice all forms of engineering, and allow them to design the most complex civil engineering projects subject only to their own determination of competence. *[S. B&P]*

FUTURE MEETINGS

- November 4–5, 1999 in Burlingame.
- December 16–17, 1999 in Sacramento.
- February 24–25, 2000 in Newport Beach.
- April 6–7, 2000 in Monterey.
- May 31–June 1, 2000 in Redding.
- July 27–28, 2000 in Riverside.
- September 7–8, 2000 in the Bay Area.
- October 19–20, 2000 in San Diego.
- December 14–15, 2000 in Sacramento.